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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

CHARLES N. BELSSNER,	)	Case No. 2:17-cv-01666-APG-NJK
Plaintiff(s),	)	
v.	)	ORDER
BANK OF AMERICA, et al.,	)	
Defendant(s).	)	

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Pursuant to 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 1. Plaintiff also submitted a complaint. Docket No. 1-1.

**I. In Forma Pauperis Application**

Plaintiff has submitted the affidavit required by § 1915(a). Docket No. 1. Although a close question, the Court concludes that Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk’s Office is further **INSTRUCTED** to file the complaint on the docket. The Court will now review Plaintiff’s complaint.

**II. Screening Complaint**

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks

1 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When  
2 a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the  
3 complaint with directions as to curing its deficiencies, unless it is clear from the face of the  
4 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d  
5 1103, 1106 (9th Cir. 1995).

6 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint  
7 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is  
8 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th  
9 Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim showing  
10 that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
11 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it demands “more  
12 than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft*  
13 *v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court  
14 must accept as true all well-pled factual allegations contained in the complaint, but the same  
15 requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the  
16 elements of a cause of action, supported only by conclusory allegations, do not suffice. *Id.* at 678.  
17 Secondly, where the claims in the complaint have not crossed the line from conceivable to plausible,  
18 the complaint should be dismissed. *Twombly*, 550 U.S. at 570. Allegations of a *pro se* complaint  
19 are held to less stringent standards than formal pleadings drafted by lawyers. *Hebbe v. Pliler*, 627  
20 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se* pleadings is required  
21 after *Twombly* and *Iqbal*).

22 Here, the Court understands the basic gist of Plaintiff’s grievance appears to be that he  
23 alleges he is disabled, that he spent 2 ½ years attempting to obtain a mortgage from Defendant Bank  
24 of America, and that the mortgage application was ultimately denied as incomplete because  
25 Defendant Bank of America asserted that it could not confirm a residential address for Plaintiff. *See*  
26 Docket No. 1-1. At the same time, however, the complaint fails to set forth how these allegations  
27 support a claim under the Americans with Disabilities Act, the Fair Credit Reporting Act, or any of  
28 the other causes of action mentioned. *See id.* To comply with Rule 8, a complaint must set forth

1 coherently who is being sued, for what relief, and on what theory, with enough detail to guide  
2 discovery. *See McHenry v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1995).<sup>1</sup>

3 Quite simply, the complaint fails to identify how the factual allegations made state a claim  
4 for any particular cause of action, and therefore fails to satisfy Rule 8. The Court will, however,  
5 allow Plaintiff an opportunity to amend the complaint so that he can comply with Rule 8.

### 6 **III. Conclusion**

7 Accordingly, **IT IS ORDERED** that:

- 8 1. Plaintiff's request to proceed *in forma pauperis* is **GRANTED**. Plaintiff shall not  
9 be required to pay the filing fee of four hundred dollars (\$400.00).
- 10 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of  
11 prepayment of any additional fees or costs or the giving of a security therefor. This  
12 Order granting leave to proceed *in forma pauperis* shall not extend to the issuance  
13 and/or service of subpoenas at government expense.
- 14 3. The Complaint is **DISMISSED** with leave to amend. Plaintiff will have until  
15 **August 31, 2017**, to file an Amended Complaint, if the noted deficiencies can be  
16 corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed that the  
17 Court cannot refer to a prior pleading (i.e., the original Complaint) in order to make  
18 the Amended Complaint complete. This is because, as a general rule, an Amended  
19 Complaint supersedes the original Complaint. Local Rule 15-1(a) requires that an  
20 Amended Complaint be complete in itself without reference to any prior pleading.  
21 Once a plaintiff files an Amended Complaint, the original Complaint no longer  
22 serves any function in the case. Therefore, in an Amended Complaint, as in an  
23 original Complaint, each claim and the involvement of each Defendant must be  
24 sufficiently alleged.


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27 <sup>1</sup> Although the Court construes complaints drafted by *pro se* litigants liberally, they still must  
28 comply with the basic requirements of Rule 8. *See, e.g., Montgomery v. Las Vegas Metropolitan  
Police Dept.*, 2014 WL 3724213, at \*3 n.3 (D. Nev. July 28, 2014).

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4.     **Failure to comply with this order will result in the recommended dismissal of  
this case.**

Dated: August 1, 2017

  
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NANCY J. KOPPE  
United States Magistrate Judge